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S E C R E T SECTION 01 OF 03 ADDIS ABABA 003476

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E.O. 12958: DECL: 12/05/2017
TAGS: KDEM PGOV PREL ET
SUBJECT: ETHIOPIA UNCOMPROMISING ON REJAILING OF OPPOSITION
LEADER BIRTUKAN MIDEKSSA

REF: ADDIS 3460

Classified By: Ambassador Donald Yamamoto for reasons 1.4 (b) and (d).

This is an urgent Action Request. Please see para 8.

SUMMARY

¶1. (S/NF) Ambassador called on Prime Minister Meles on December 31 in an effort to secure the release from prison of prominent opposition leader Birtukan Midekssa, who had been jailed on the evening of December 29 (Reftel). Birtukan was arrested on alleged charges of violating the terms of her pardon from prison in August 2007; the Ethiopian Government revoked her pardon on December 30 taking her to Kaliti Prison to serve a life sentence. Meles underscored the importance of observing the rule of law and argued that Birtukan violated the conditions of her 2007 pardon by denying that she had asked for the pardon. Meles further argued that Birtukan had rejected the notion of observing the constitution. Despite the Ambassador's efforts to find a legal way to secure her release and reversal of the pardon revocation -- and underscoring that there would be calls for Birtukan to be designated a prisoner of conscience -- Meles replied that the rule of law must be observed and that he hoped the U.S. would value the importance of the strategic bilateral relationship and understand the reasons for Birtukan's re-arrest. The Ambassador noted that this arrest could be the focus of relations rather than the important security and development partnership the two countries have established. The Embassy strongly believes that the only possibility of securing Birtukan's release, and averting the political instability likely to result from it, is for the Assistant Secretary and the Secretary to call Prime Minister Meles to request her release as a follow-up to the Ambassador's meeting. End Summary.

REJAILING A PROMINENT OPPOSITION LEADER -- THE BACKGROUND

¶2. (S/NF) Ambassador held an emergency meeting with the Prime Minister on December 31 in an effort to secure the release, and reversal of the pardon revocation, of prominent opposition leader, Birtukan Midekssa. A former judge, she spent two years in prison following the bloody aftermath of the 2005 national elections on charges of "outrages against the constitution" and seeking to overthrow the government through violence. She was released in July 2007 after a group of Ethiopian elders, with the strong behind-the-scenes actions of the U.S. Embassy, secured a pardon for Birtukan and 70 other opposition figures. Conditions were placed on

the pardon that the opposition figures not deny the statement that they signed in exchange for their release. In the past several weeks, Birtukan made remarks to crowds in Germany and Sweden that she did not ask for a pardon from the Meles Government. Technically, she was correct, as she had requested pardon in writing to the Elders who requested the pardon on her behalf to the Government, which was finally granted. Police warned her to cease on such comments upon her return to Ethiopia. Nevertheless, her comments prompted a convening of the Board of Pardon which voted 7 to 1 to revoke the pardon. On December 29, the Elders informed the Ambassador of the seriousness of the turn of events. The Ambassador called President Girma urging him not to sign the Pardon Board's recommendation, which he agreed to do for 24 hours. The Ambassador called Birtukan and persuaded her to drop her argument that she did not seek a pardon from the Government and focus more on an opposition platform and pushing democratic values. Further, the Ambassador persuaded Birtukan to write a short note to the Prime Minister, which she did draft at the office of the Elders. Unfortunately, the police arrested Birtukan before the letter could be delivered to the Prime Minister and prior to the President's signature of the Pardon Board's recommendation. The President later noted to the Ambassador that this was the police's proper jurisdiction and that only the Prime Minister could reverse this action. The Ambassador also called the Deputy Police Commissioner but could not receive any support.

PRIME MINISTER - THE COURT OF LAST RESORT

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¶3. (S/NF) The Prime Minister told the Ambassador that it was too late, that Birtukan had violated the terms of her pardon and thus her re-arrest was proper and appropriate. In a position of frustration mixed with anger, Meles said he could not, and would not, interfere with the judicial process nor "lift a finger" to pardon her again. The rule of law must be observed and respected. Meles argued that Birtukan "flaunted" and "disrespected" the rule of law with her statements overseas and her actions in not abiding by the conditions of her pardon or in accordance with the constitution.

¶4. (S/NF) The Prime Minister stated that a pardon is a powerful tool to be used "sparingly, carefully and judiciously." It undermines the judicial process because it is overturning a legally adjudicated case, nullifying the crime. As such, the Prime Minister said it must be accepted with respect and not taken lightly. Birtukan made her release a "game," the Prime Minister said. She ignored the terms of her original pardon release through her comments overseas and issuance of statements up until the time of her arrest. Her blatant disregard of the law now requires her to fulfill the full term of her sentence, which is life in prison without hope of parole or bail. Further, the Prime Minister said the government would not issue another pardon.

PUSH BACK

¶5. (S/NF) The Ambassador handed over the letter drafted by Birtukan just prior to her arrest and in response to the Ambassador's recommendation, stating that she indeed asked for a pardon from the government. The Prime Minister said the Pardon Board has already acted and there is nothing he can, or will, do to help Birtukan. The Ambassador raised in succession possibilities of avoiding a crisis with Birtukan's arrest, noting that at the time of her arrest and statement the President had not yet signed the Pardon Board's revocation of pardon order and also pointed to article 17 of the Pardon Law noting that the accused has 20 days to respond to a decision of revocation of pardon. The Prime Minister said this has no bearing because Birtukan had violated the

terms of her original release from prison.

¶6. (S/NF) The Ambassador said that this arrest, no matter how legal and proper it may be, will be viewed in political terms, raising the strong ire of the vocal Ethiopian diaspora. Further, it is possible that there could be discussion of calling Birtukan a "prisoner of conscience," similar to the case of Aung San Suu Kyi in Burma, though the brutal nature of the Burmese government is nowhere similar to that of Ethiopia's support for the U.S. on a wide range of issues. But the comparison would hurt relations. Birtukan's recent nomination for the Secretary's International Women of Courage Award would underscore the legitimacy of such a charge, however. Finally, Birtukan's arrest could overshadow the strong relationship we have established together and become the focus of bilateral talks as a new President takes over in the U.S. to the detriment of our mutually shared interests on security and development.

¶7. (S/NF) The Prime Minister hesitated but said firmly that Ethiopia must stand for the rule of law and cannot back down, otherwise the judicial process would lose respect. Further, he said Birtukan must understand, as a judge, the importance of the constitution and rule of law and that the voices of opposition from the diaspora in the U.S. cannot and must not be the basis for securing her release. Finally, the Prime Minister said he hoped the U.S. would value the bilateral relationship's beneficial points as the centerpiece of the relationship, not the arrest of Birtukan. The Ambassador added that this would cloud the relationship since it will come at the start of a new Administration.

COMMENT AND ACTION REQUEST

¶8. (S/NF) The Group of Elders is meeting separately with the Prime Minister and the European Union Ambassadors will meet among themselves sometime in the next two weeks to discuss this issue. This self-inflicted damage by the government will significantly impact on bilateral relations just as a

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new President takes office in Washington. More importantly, it risks serving as the catalyst for political violence which could lead to domestic instability, which would significantly impede our ability to pursue critical U.S. objectives in Ethiopia and the broader Horn of Africa. We strongly recommend that the Assistant Secretary and the Secretary raise this issue urgently with Prime Minister Meles in support of the Ambassador's approach. Should this effort fail, we should consult with our colleagues to coordinate a common, and possibly public, message to the Ethiopian government. END COMMENT AND ACTION REQUEST.

YAMAMOTO